

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[illegible]

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE EDUARDO C. ROBRENO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: NORMAN M. VALZ, ESQUIRE
Norman N, Valz, P.C.
434 North 38th Street
Philadelphia, PA 19104

For the Defendant: STEVEN A. HABER, ESQUIRE
Obermayer Redmann Maxwell &
Hippel LLP
Centre Square West
1500 Market Street
Suite 3400
Philadelphia, PA 19102

Transcribers Limited

17 Rickland Drive
Sewell, NJ 08080
856-589-6100 • 856-589-9005

1 Audio Operator: Chris Kurek

2 Transcribed By: Donna M. Anders

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1 (The following was heard in open court at
2 4:29 p.m.)

3 THE COURT: Good afternoon.

4 ALL: Good afternoon, Your Honor.

5 THE COURT: Please be seated. Okay. We are
6 here to consider the motion to dismiss so, Mr. Haber,
7 do you want to go forward?

8 MR. HABER: Your Honor, thank you. My motion
9 pending before the Court is a motion to dismiss under
10 Rules 12(b)(2) for lack of personal jurisdiction, as
11 well as 12(b)(6) for failure to state a claim.

12 As far as I can tell, Your Honor, based upon
13 the opposition received, there is no opposition to the
14 12(b)(6) motion. There has been no suggestion that the
15 demurrer that we filed is, in effect, invalid, and so
16 should you rule that there is personal jurisdiction, I
17 would ask that you simply dismiss the case under Rule
18 12(b)(6).

19 The 12(b)(2) argument that we made, Your
20 Honor, is one where I represent nine defendants, eight
21 of which are from Florida, one of which is from
22 Washington, DC.

23 THE COURT: What happened? The other folks,
24 a default was entered against them, and they are not
25 part of the case?

1 MR. HABER: Well, Your Honor, as I understand
2 it, the defendants who actually had some contact --

3 THE COURT: Yes.

4 MR. HABER: -- had a contract with the
5 plaintiff where perhaps they would have consented to
6 this Court's jurisdiction. I believe he has taken a
7 default against that.

8 THE COURT: Well, a default has been entered.
9 There has been no judgment entered, but a default --

10 MR. HABER: Okay.

11 THE COURT: -- has been entered.

12 MR. HABER: So, the clerk has entered a
13 default.

14 THE COURT: But, they have nothing to do with
15 you?

16 MR. HABER: They do not.

17 THE COURT: Okay.

18 MR. HABER: And so the only connection, Your
19 Honor, as far as I can tell to this jurisdiction other
20 than the fact that this is where the plaintiff resides
21 is the plaintiff has a contract with one of those other
22 defendants. That defendant has agreed in the contract
23 that Pennsylvania would be a jurisdiction where they
24 would agree to be sued.

25 THE COURT: Which defendant is that?

1 MR. HABER: I believe that is Mrs. Ford --

2 THE COURT: Okay.

3 MR. HABER: -- and her company.

4 THE COURT: Okay.

5 MR. HABER: But, Your Honor, my clients,
6 again, are either Florida defendants and/or a
7 Washington, DC defendant.

8 THE COURT: Now, the motion to dismiss for
9 lack of personal jurisdiction probably would have to be
10 granted with leave to amend. If such were the result,
11 should it also be leave to amend the complaint to state
12 a claim?

13 MR. HABER: Well, Your Honor, I would argue
14 that there would be a waiver on the argument for the
15 failure to state a claim since the arguments have been
16 made, they have been presented to the Court and they
17 have been briefed by the defendant.

18 So, I would ask that if you are going to --
19 you know, if you were going to allow amendment for the
20 personal jurisdiction it would be moot. There would be
21 no reason to do that.

22 I think you can't just grant my motion to
23 dismiss even if there is no opposition because you have
24 to take a look at it and consider the merits of it.

25 THE COURT: Yes.

1 MR. HABER: But, I do believe, however, that
2 if you were to review them you would find them to be
3 meritorious in that --

4 THE COURT: But, they would be granted leave
5 to amend.

6 MR. HABER: I think that that is probably
7 right then, Your Honor.

8 THE COURT: Yes. Okay. Very good. Thank
9 you. Mr. Valz.

10 MR. VALZ: Good afternoon, Your Honor.

11 THE COURT: Okay. There are no facts here in
12 the complaint. Other than that, it is a great
13 complaint. You've got a problem here, unless you can
14 come up with some facts that would put these defendants
15 in some relationship to Pennsylvania and, number two,
16 that you will set forth some facts that would state a
17 claim against them. It's sort of a cry in the
18 wilderness for relief, but I don't see any facts. Tell
19 me what happened here.

20 MR. VALZ: Okay. Well, all the defendants,
21 the Florida defendants --

22 THE COURT: Yes.

23 MR. VALZ: -- have a business model and it's
24 pretty much illustrated on Exhibit D in an e-mail. It
25 is that they are going to get companies that have some

1 financial distress. They are going to merge them into
2 Florida companies which will assume the debt.

3 THE COURT: Right.

4 MR. VALZ: They will take over part of the
5 management of it. They will set up the Florida
6 entities, and then they allege that they are going to
7 give financing to these companies which will, in turn
8 -- and then they will do something called the Swiss
9 debt acquisition, I believe it's cram-down model,
10 wherein they will reduce the obligations to the
11 companies, in fact, in this instance it's Complete
12 Business Solutions Group. They used this model three
13 times on our clients, Your Honor.

14 THE COURT: I don't understand what you mean
15 by "your clients"?

16 MR. VALZ: I'm sorry. My client is Complete
17 Business Solutions Group.

18 THE COURT: Right. But they are in the
19 factoring business.

20 MR. VALZ: That's correct.

21 THE COURT: So, they have nothing to do
22 with -- all they do is they lend money. So, how are
23 they affected by the --

24 MR. VALZ: Well, the whole purpose --

25 THE COURT: -- I mean, assuming all of that

1 is true --

2 MR. VALZ: The whole --

3 THE COURT: -- what do they have to do with
4 them?

5 MR. VALZ: The whole business model is to
6 reduce the debt supposedly through merging the debt --
7 well, the companies, they are the clients of Complete
8 Business Solutions Group, into a new entity which these
9 Florida entities create, Your Honor.

10 THE COURT: But, I don't understand how --
11 what do you call that? What is the tort or the --

12 MR. VALZ: Well, it's an attempt to
13 fraudulent transfer, first off. It's a business model
14 based on fraudulent transfer. They are going to
15 transfer the debt obligations, and my company has
16 purchased the receivables of these companies that the
17 Florida defendants target.

18 In this instance, the Ford Resource Group,
19 there is another company, Ansel (ph) Group and they are
20 targeted by the Florida defendants which then offers
21 them --

22 THE COURT: But is your client a creditor? I
23 guess your client is a creditor of the --

24 MR. VALZ: It would be considered a creditor,
25 but really a purchaser of assets.

1 THE COURT: Well, to be in a fraudulent
2 transfer, you have to be a creditor.

3 MR. VALZ: Well, they are a creditor.

4 THE COURT: Okay.

5 MR. VALZ: It's fraudulent transfer or you
6 could call it conversion because they purchase the
7 receivables of these companies.

8 THE COURT: Okay.

9 MR. VALZ: And their purchased receivables
10 are then transferred by the Florida defendants to a new
11 company that's set up in Florida with a similar name,
12 I think it's Florida Resource. Ford Resource Partners
13 was set up by them in Florida. She took over the
14 receivables of Florida -- of Ford Resource Partners.

15 THE COURT: So, these are folks to whom you
16 have -- lending money and the money is guaranteed by
17 the accounts receivable and --

18 MR. VALZ: Well, we call it purchasing. They
19 are purchasing the accounts receivable.

20 THE COURT: They are purchasing the accounts
21 receivable. What is the problem with what these third
22 parties are doing to you?

23 MR. VALZ: Well, they are offering these
24 companies -- they are targeting these companies --

25 THE COURT: Right.

1 MR. VALZ: -- saying like, listen, don't pay
2 the money to them. In other words, we're going to
3 merge your company into a Florida company which will be
4 then obligated to pay them, and we're going to reduce
5 the payments or the obligations to them unless we
6 change --

7 THE COURT: Well, is there anything unlawful
8 or tortious about that other than maybe by judgment for
9 the people who sold you the accounts receivable? The
10 injury, it seems to me, is to the merchants, isn't it?

11 MR. VALZ: Well, to the merchant and us. I
12 mean, that's property --

13 THE COURT: Why to you?

14 MR. VALZ: Because we have purchased the
15 receivables. They are our property.

16 THE COURT: Yes. Okay.

17 MR. VALZ: And they are being moved to
18 Florida in an attempt to thwart our ability to retrieve
19 the receivables which we have agreements to withdraw
20 from, you know, designated bank accounts.

21 THE COURT: Okay. Now, all of that seems to
22 me is not really apparent from the complaint. Would
23 you agree with that?

24 MR. VALZ: Yes. I thought it was, but, yes,
25 I am --

1 THE COURT: Each of the defendants -- the
2 other thing is that you do something which I think we
3 call a shotgun pleading. That is, you shoot them with
4 a shotgun and hit all the defendants, but we don't
5 know.

6 I think that you are going to need to go back
7 and then file an amended complaint. The amended
8 complaint will have to allege facts first as to
9 personal jurisdiction as to each of the defendants,
10 what are the facts. I think you have some kind of
11 conspiracy in mind, but as to each of the defendants
12 what theory you are proceeding under.

13 Are going under specific jurisdiction,
14 general jurisdiction, or are you proceeding under sort
15 of this general theory of harm to the Calder case which
16 allows apparently some ability to keep in the fex (ph)
17 test of Calder versus Jones? Is that what you are
18 doing here?

19 MR. VALZ: Basically, yes.

20 THE COURT: Okay. Well, you have to flesh
21 that out as to each of the defendants. For example,
22 "He expressly aimed the tortious conduct at the forum
23 such that the forum can be said to be the focal point
24 of the tortious activity."

25 I think we need to understand that, and I

1 think you need to apply that test to each of the
2 defendants, you can't throw them all together. I think
3 while you are at it, I also -- to the extent that --
4 you know, I think to short-circuit this matter, I mean,
5 we could go through that and then do a failure to state
6 a claim, but it seems to me in the interest of economy,
7 we ought to do the two together because either they
8 make it or they don't make it.

9 I think you will need to also -- an
10 alternative holding of the Court you fail to state a
11 claim, and it may be dicta if you have no personal
12 jurisdiction. But, anyway, there again I think you
13 need to break this out.

14 For example, I see there are no allegations
15 against New Horizon Management Company. There are no
16 allegations against New Hampshire Acquisition
17 Corporation. There are no allegations against New
18 Hampshire Acquisition Business Trust.

19 Some of these other folks, you said like
20 Roussin and Matta, they played an active role. I don't
21 know what that means. The only one that has to me
22 perhaps a colorable connection here is Mr. Steadman. I
23 think you need to flesh this out again as to what they
24 did.

25 MR. VALZ: Okay.

1 THE COURT: Then we can take a look at it and
2 see if you are in the right place. I guess you would
3 like to be here, it's more convenient, but I think
4 there is an issue that needs to be, you know, out
5 front.

6 What about the argument that Mr. Haber makes
7 about the failure to state a claim. You didn't oppose
8 that.

9 MR. VALZ: Well, I believe that that is
10 basically throughout my response. I reiterate the
11 claims that were made.

12 THE COURT: I don't understand. What do you
13 mean?

14 MR. VALZ: Well, I mean -- and I did spend,
15 obviously, the bulk of the response in responding to
16 the jurisdictional issue because I thought that was --

17 THE COURT: Right, exactly, so you didn't
18 really respond to the motion to state a claim.

19 MR. VALZ: Okay.

20 THE COURT: I think he is maybe technically
21 correct, but I think that it could be argued that since
22 there was a jurisdictional issue, we had to get that
23 first, so I will give you a break so you can address
24 this, you know, at this point. So, how long do you
25 need?

1 MR. VALZ: Say 30 days.

2 THE COURT: 30 days, okay. Mr. Haber, what
3 do you think?

4 MR. HABER: Whatever is okay with you is okay
5 with me, Your Honor.

6 THE COURT: Okay. Well, what do you think of
7 this result?

8 MR. HABER: I think it is a wise decision.

9 THE COURT: Okay. By a wise judge, is that
10 right?

11 MR. HABER: Exactly.

12 THE COURT: Okay. This man knows what he is
13 saying. Okay. I will enter an order today. We will
14 get started. We will see whether there is something
15 here or not.

16 MR. HABER: Okay.

17 THE COURT: If there is, we will go forward,
18 if not, I don't see any point in getting into
19 scheduling orders and all of that at this point. Okay.
20 Very good. Thank you.

21 MR. VALZ: Thank you very much, Your Honor.

22 MR. HABER: Thank you, Your Honor.

23 (Proceedings adjourned, 4:43 p.m.)

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CERTIFICATION

I, D.M. Anders, hereby certify that the foregoing is a correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

8/3/17
Date

D.M. Anders
D.M. Anders